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UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

8
9 UNITED STATES OF AMERICA,

10 Plaintiff,

11 v.
12

13 WIL CASEY FLOYD,
14 Defendant.

15 NO. CR17-149RSM

**DEFENDANT'S SENTENCING
MEMORANDUM**

16 June 1, 2018

17 Defendant, WIL CASEY FLOYD, by and through his attorney, Lawrence A.
18 Hildes, hereby submits the following sentencing memorandum:

19 1. **FACTUAL BACKGROUND**

20 **A. BACKGROUND AND INCIDENT**

21 Defendant Wil Casey Floyd is an Iraq combat veteran (infantry) who suffers from
22 Post Traumatic Stress Disorder. In addition, Mr. Floyd has Asperger's Syndrome, which
23 places him at the high end of the autism spectrum. Individuals with Asperger's tend to
24 have difficulty with social relationships, difficulty communicating, and tend to obsess on
25 one or two topics at any moment. ([https://www.activebeat.co/your-health/6-things-to-](https://www.activebeat.co/your-health/6-things-to-know-about-aspergers-syndrome)
[know-about-aspergers-syndrome](https://www.activebeat.co/your-health/6-things-to-know-about-aspergers-syndrome)).
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27 CR17-149RSM -United States v. Floyd –
28 Defendant's Sentencing Memorandum 1

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1 He also suffered a pattern of physical abuse at the hands of his father who also
2 physically abused Defendant's mother and sexually abused Defendant's sisters,
3 creating a strong need in Defendant to protect those close to him because he could not
4 protect his sisters or his mother as a child.

5 Upon his return from Iraq, Defendant was angry about what he had
6 observed there and also became quite concerned about police brutality. Plaintiff
7 settled in the Seattle area and became involved socially and politically with a
8 group of Anarchists, who were also concerned about police brutality. The U.S.
9 Attorney's description of the "Anarchist Movement" is oxymoronic and highly
10 inaccurate. Anarchism is a political ideology/philosophy that contains a broad
11 range of tactics and beliefs. For example, there is a strong pacifist tendency
12 within Anarchism (Dorothy Day and the Catholic Worker Movement). the court
13 should not draw any conclusion from Plaintiff's brief association with an aspect of
14 that philosophy, and he was and is entitled to Freedom of Association. In fact, he
15 moved back to Wisconsin, and has no connection to any of the people involved
or to any political activity or ideology any longer.

16 Mr. Floyd, as a veteran was deeply troubled and angered by news footage
17 and other accounts of police attacking peaceful demonstrators. He knew that the
18 police in Seattle had a history of attacking Mayday marches, and knew that his
19 friends were intending to participate in a Mayday march (a tradition that goes
back to the original Mayday Rally at Haymarket Square in Chicago in 1886 and
20 which is celebrated worldwide as International Workers Day.

21 As a result, in a serious error in judgment, Mr. Floyd constructed several
22 Molotov cocktails and brought them to the march. He had not formed an intent to
23 use them and became increasingly uncomfortable with having them. He planned
24 to throw them away during the course of the demonstration.

25 The Seattle Police Department attacked the march without provocation
26 and physically drove the demonstrators out of downtown into SODO. They died

1 so with baton strikes, and a hail of concussion grenades, pepper balls, pepper
2 spray and other less lethal munitions.

3 The attack triggered Defendant's PTSD and his need to protect his friends
4 and then girlfriend who were being attacked and he threw unlit Molotov cocktails
5 (so as not to burn anyone) in the direction of the police.

6 Despite the Government's claim that one of the cocktails ignited when it struck at
7 the same time an officer unleashed a concussion grenade, the police report
8 themselves note "no officer burned" with their description of the cocktails.

9 The Government has produced no footage of any one or anything burning,
10 not medical reports, not affidavits, and Defendant did and does entirely dispute
11 that claim and the accompanying four level upward adjustment. The
12 Presentencing report fudges that issue, stating that Defendant threw the bottles
13 "at" an officer not hit an officer, and equates that with Felony Assault 3. But
14 Assault 3 Under Washington law requires actually striking an officer (**9A.36.031**).

15 Neither the King County Prosecutor's Office nor the Seattle City Attorney's
16 Office has ever charged Defendant with any offense. Neither has the
17 Government ever charged an assault herein. Other than the instant charge,
18 Defendant's record is spotless.

19 **B. SUBSEQUENT HISTORY**

20 This incident severely frightened and deeply troubled Defendant who then
21 moved first to San Diego and then home to Wisconsin where his mother lives,
22 gave up all political work, and sought and gained employment, and has lead a
23 quiet life harming no one and violating no laws.

24 Defendant had never been arrested before, never accused of any crime,
25 and since this incident has violated no laws, committed no crimes, harmed no
26 one.

27 He has fully complied with every release condition, engaging in drug
28 counseling, therapy, and psychiatric treatment, remaining employed, violating no

1 laws, using no drugs or alcohol, and taking his medications, and has developed a
2 healthy support network of close friends and family. He has reported without fail
3 to his appointments with his probation officer and cooperated fully with her. She
4 stated, to Defendant and others, that she believed that probation, in her opinion,
5 was the only appropriate sentence in this matter. As noted in the presentencing
6 report, Defendant willingly appeared for his presentence interview and answered
7 all questions asked of him fully and frankly.

8 To this memorandum, Defendant attaches several letters recommending
9 his character and asking the court for leniency on his behalf from friends, family,
10 and his boss all of them are people who are impressed by him, care deeply for
11 him, and trust him.

12 They speak about his gentleness around people and animals, his
13 trustworthiness, his good heart, and their deep concerns for his welfare and his
14 for them. They talk about him taking responsibility for his actions and wanting to
15 put this incident behind him and make a positive contribution in everything he
16 does.

17 C. INTERROGATION AND ARREST

18 11 months after the Mayday incident, Defendant, on his way from San
19 Diego home to Wisconsin was pulled off a plane by a SWAT team on the tarmac
20 at Denver International Airport. He was driven, handcuffed in the back of a police
21 car all the way into Denver, deliberately by the scene of a demonstration where
22 the officers in the car with him made threatening statements about what they
23 would like to do to demonstrators.

24 Defendant was then interrogated and threatened by a room full of FBI
25 Agents and other officers and told he would not get to go home if he insisted on a
26 lawyer or refused to give them names of other participants in the demonstration.

1 He, terrified and trying to please them, gave the name of his ex-girlfriend.
2 He was then taken back to the airport and allowed to fly home. Three weeks
3 later, he was arrested at his mother's home and again interrogated.

4 The FBI again demanded names for what, at most was a state criminal
5 charge. He was then brought to Seattle for a bail hearing and released. The US
6 Attorney attempted to reach an agreement with Defendant through the Federal
7 Defender's Office for Defendant to inform in return for a possible unspecified
8 downward departure if the government found the information useful. When
9 Defendant fired the Federal Defender and hired current counsel because he felt
10 coerced, new counsel, amidst much saber-rattling by the US Attorney, declined
11 to reach such an agreement.

12 CBP and the FBI proceeded, at the direction of the US Attorney to
13 interrogate a women they suspected of having been at the demonstration and
14 received a court order for DNA samples of that woman and her boyfriend. Only
15 when their DNA, and for that matter that of Defendant, failed to match any
16 samples from the cocktails did the US Attorney drop the demand for names and
17 ultimately agree to a maximum of 37 months.

18 **II. SENTENCING AND CALCULATION**

19 **The Penalties.** Defendant understands that the statutory penalties for the
20 offense of *Unlawful Possession of a Destructive Device*, as charged in Count 1,
21 are as follows: imprisonment for up to ten (10) years, a fine of up to \$10,000, a
22 period of supervision following release from prison of up to three (3) years, and a
23 special assessment of one hundred dollars (\$100.00). If Defendant receives a
24 sentence of probation, the probationary period could be up to five (5) years.

25 The US Attorney agreed to seek no more than 37 months, the
26 Presentencing report recommends no more than 30.

1 Defendant disputes the calculations of both the US Attorney and of the
2 Presentencing Report. He agrees that the offense score is 18; has a previous
3 offender score of 0. The Defense believes that assessing two penalties for the
4 destructive device, which is, after all what he's charged with in the first place is
5 excess, and that, as discussed, the four point upwards revision for the other
6 crime committed is inaccurate and doesn't apply. That makes his score 20, not
7 26.

8 Defendant has pled guilty, apologizes for his actions and rhetoric, and
9 they have no part in the way he lives his life now. He is and was deeply troubled
10 about what he did and will never do anything like that again. He is not an
11 Anarchist (for what that means) and just focuses on work, treatment, meeting his
12 obligations and being a good son, friend, brother, and community member. So,
13 the reduction of three points does apply, reducing his score to 17.

14 That results in a potential sentence to 24-20 months.

15 There are, however, strong reasons for a downward departure from the
16 Guidelines.

17 1) Defendant has mental health issues that would be severely
18 exacerbated by incarceration (USSG 5H1.4 p.s., and those mental health
19 issues led to the incident, and Defendant is now engaged in productive
20 treatment for them that would be interrupted. In addition, his Asperger's
21 syndrome makes him a potential target/victim in prison.

22 2) Defendant is a military combat veteran, which again led to the
23 incident, and he should receive a downward departure for his service and
24 its relationship to the incident (USSG 5K1.1 p.s.).

25 3) Defendant is at essentially no risk to reoffend, is extremely
26 penitent for what he did, and has taken every available concrete step to
27 prevent any possibility of recommission: moving away, cutting ties with
28 that community, engaging in counseling, psychiatric treatment, and

1 substance abuse counseling, obtaining gainful employment, even giving
2 up any political activity. He has learned his lesson and is in no way a
3 threat to the community. In fact, he is an asset to family, friends, co-
4 workers, and others whose lives he touches.

5 It would not serve the community here or there to have Defendant
6 locked up, and he has already learned his lesson. Indeed, as his probation
7 officer said, Probation is the only appropriate sentence.

8 The US Attorney attempts to get around Defendant's total turn
9 around of his life and lack of threat by unleashing the parade of horribles
10 about how "other anarchists" are following the case and would be
11 comforted by Defendant's not receiving prison time, but there is no
12 justification for harming Defendant deter other "anarchists"

13 THEORETICAL FUTURE ACTS. The fact that there is a group that has
14 followed his case and offers support through the legal process for some
15 arrestees does not in any way equate to a need to imprison Mr. Floyd.
There is no justice there.

16 2. The court is free to depart downward from the Sentencing
17 Guidelines even significantly as long as its doing so is not a clear abuse of
18 discretion. *Kimbrough v. United States*, 552 U.S. 85, 128 S.Ct. 558
(2007).

20 Since the Supreme Court's Booker decision it has been " pellucidly clear that the
21 familiar abuse-of-discretion standard of review now applies to appellate review of
22 sentencing decisions." Gall, 552 U.S. at 46, 128 S.Ct. at 594; ...That familiar standard "
23 allows a range of choice for the district court, so long as that choice does not constitute
24 a clear error of judgment." *United States v. Frazier*, 387 F.3d 1244, 1259 (11th Cir.2004)
25 (en banc) (quotation marks omitted) (quoting *Rasbury v. I.R.S.*, 24 F.3d 159, 168 (11th
26 Cir.1994)).

1 *United States v. Irey*, 612 F.3d 1160, (Cir. 2010).

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3 Given Defendant's character, the harm that would ensue, and the
4 virtual impossibility of repetition. A downward departure to a sentence of
5 probation without prison time is appropriate, warranted, and no abuse of
6 discretion.

7 Respectfully Submitted
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9 Dated: May 29, 2018
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12 _____/s/ LAWRENCE A. HILDES _____
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2 **PROOF OF SERVICE**

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4 Lawrence A. Hildes certifies as follows:

5

6 I am over the age of 18 years, and not a party to this action. I am a citizen of the United
7 States.

8 My business address is P.O. Box 5405, Bellingham, WA 98227

9 On May 29, 2018, I served the following document(s) described as follows

10 Defendant's Sentencing Memorandum
11 on the following person(s) in this action at the following address(es):

12 **Todd.Greenberg4@usdoj.gov**

13 [X] By electronically filing and thus causing to be served on Counsel listed above

14 [X] (FEDERAL) I declare under penalty of perjury that I am a member of the BAR of this
15 court, and that the above information is true and correct.

16 Executed on May 29, 2018, at Bellingham, Washington.

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18 _____
19 /S/ LAWRENCE A. HILDES

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21 Lawrence A. Hildes, WSBA #35035

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